UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,671	05/21/2004	John S. Smyth	BUR920040064US1	3670

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EXAMINER
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ART UNIT	PAPER NUMBER
2142	

NOTIFICATION DATE	DELIVERY MODE
04/07/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _02 January 2008_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-31_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-31_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

This is in response to the amendment filed on January 2nd 2008 which concerns application 10/709671.

Status of Claims

Claims 1-31 are pending.

Claims 1-31 are currently rejected under 35 U.S.C. 103(a).

Response to Arguments

1.   Applicant's arguments, see pg. 10, filed 1/02/08, with respect to the drawing objections have been fully considered and are persuasive. The drawing objection has been withdrawn.

2.   Applicant's arguments with respect to the claim objections have been fully considered and are persuasive. The objections of claims 1-7, 9-10, 14-22 and 24-31 have been withdrawn.

3.   Applicant's arguments with respect to the 101 rejections have been fully considered but are moot in view of the new grounds of rejection.

4.   Applicant's arguments with respect to the 112 rejections have been fully

considered and are persuasive. The 112 rejections of claims 1-7, 9-10, 16-22 and 24-

31 have been withdrawn.

5.   Applicant's arguments concerning the 102(e) rejections have been fully

considered but they are not persuasive. Applicant argues that Donker does not disclose

communicating "the network resources availability as available only if the network

resources is available within a specified response time" as required by claim 8 and

similarly claim 23, rather Donker only discloses a "ping of no" (page 13). This argument

is not persuasive because Donker does in fact disclose a time out scenario (paragraph

46). Nevertheless, the 102(e) rejection is withdrawn for other reasons. A new 103(a)

rejection is made below.

6.   Applicant's arguments with respect to the rejection(s) of claim(s) 1-7, 9-10, 12-22

and 24-31 under 103(a) have been fully considered and are persuasive. Therefore, the

rejection has been withdrawn. However, upon further consideration, a new ground(s) of

rejection is made in view of Eden US 2002/0184361 A1 and Peterson et al. US

2004/0010584 A1.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

Claims 8-15 and 31 are rejected under 35 U.S.C. 101 because they are directed

to non-statutory subject matter. As to claims 8-15, although they are nominally directed

to a system/apparatus, the claims are directed to only software. Both the query

computer component and the status computer component may be software, as

evidenced by the fact that the functions performed by these components can be stored

in a computer program product. See claims 16-22. Accordingly, it is a misnomer to

state that claims 8-15 are directed to an apparatus when, in fact, they include within

their scope embodiments that are purely software not embodied on a computer

readable medium. As to claim 31, although it is nominally directed to a system, it is

clear from the specification at paragraph 34 that the computer infrastructure may be

implemented in hardware, software, or a combination of hardware or software.

Accordingly, it is a misnomer to state that claim 32 is directed to an apparatus when, in

fact, it includes within its scope an embodiment that is purely software not embodied on

a computer readable medium.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Eden US 2002/0184361 A1 in view of Peterson et al. US 2004/0010584 A1.

Regarding claim 1, Eden discloses "querying the network resources to determine

network resource availability and response time" as querying network devices

"paragraph 10, Fig. 13), "setting a status indicator" as changing a GUI (paragraph 12,

Fig. 13), "indicating the network resource is available only if a time of the query is less

than a specified response time" as having a timeout value, thus the resource cannot be

available unless the query time is less than the timeout value (paragraph 33). Eden

does not explicitly disclose "in the case that the status indicator indicates that the

network resources is available, determining whether a query of the network resource is

occurring" however this is taught by Peterson as a dampening window whereby the

result (available) will not be indicated while the query is occurring (paragraphs 12-13).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify Eden by including the dampening window taught by Peterson for the

purpose of ensuring no test (query) is presently occurring. The motivation for doing so

is to allow the query to complete before returning results (Peterson paragraph 35).

Regarding claim 2, Eden discloses "indicating that the network resources is

available" as changing status to available (paragraph 59).

Regarding claim 3, Eden discloses "repeating querying the network resource" as querying again (paragraph 35).

Regarding claim 4, Eden does not explicitly disclose "a querying indicator that indicates whether querying is occurring" however it would be inherent that the system knows whether a query is occurring, once started, the system waits for a response or timeout (Fig. 13), until one of these events occurs the system knows whether it is querying. It would have been obvious to one of ordinary skill in the art at the time of the invention to add an indicator for the purpose of more easily ascertaining when the system is querying. Status indicators are well known in the art.

Regarding claim 5, Eden does not specifically disclose "updating an average query completion time using the response time" however Eden does teach updating the timeout period (paragraph 33). One of ordinary skill in the art would understand that the timeout period is related to the completion time and thus updating the timeout period would take into account the completion time. Also it is simple mathematics that the average time is a product of the response times. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to update the average query completion time using the response time.

Regarding claim 6, Eden does not explicitly disclose "the specified response time is equal to a value within a threshold" however this is taught by Peterson as a using a

threshold to determine whether a test was performed in time (paragraph 90). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Eden by using a threshold as taught by Peterson for the purpose of ensuring good data. The motivation for doing so is to eliminate bad data that would skew the average.

Regarding claim 7, Eden discloses "setting the status indicator to unavailable" as representing a device as unavailable (paragraph 36).

Regarding claim 8, Eden discloses "a query computer … and a status computer" as a computer system that queries and represents the status of network devices (paragraph 29).

Regarding claims 9-15, they are system claims that correspond to the method of claims 1-7, therefore they are rejected for the same reasons.

Regarding claims 16-22, they are computer medium claims that correspond to the method of claims 1-7, therefore they are rejected for the same reasons.

Regarding claim 23, it is a method claim that correspond to the system of claim 8, it is therefore rejected for the same reasons.

Regarding claims 24-30, they are method claims that correspond to the system

of claims 9-15, thus they are rejected for the same reasons.

Regarding claim 31, it is a system claim that correspond to the method of claim 1

with the additional limitation that the query is received "from a client", Eden discloses a

client server system (paragraphs 50-55), and the rest of the claim is rejected for the

same reasons as the method in claim 1.

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Ullmann et al. US 2002/0112050 A1 discloses querying monitoring network

resources by querying and comparing response times.

Bergholm et al. U.S. 5,761,432 discloses monitoring network component status

through the use of queries.

Ratcliffe U.S. 5,864,563 discloses a method for testing a network.

Reps et al. U.S. 6,070,190 discloses network monitoring using thresholds.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JASON RECEK whose telephone number is (571)270-

1975. The examiner can normally be reached on Mon - Thurs 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Recek/
Examiner, Art Unit 2142
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